

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Rodney Daughtrey Art Unit : 3639
Serial No. : 09/812,224 Examiner : Thomas Dixon
Filed : March 19, 2001 Conf. No. : 9468
Title : FARE RULES SUMMARIZER FOR TRAVEL PLANNING

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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REQUEST FOR RECONSIDERATION OF THE
DECISION ON APPEAL DATED APRIL 8, 2009

Sirs:

Appellant respectfully requests reconsideration of the Board of Patent Appeals and Interferences Decision on Appeal dated April 8, 2009, under 37 CFR 41.50(b) (2). Appellant believes the Board misapprehended or overlooked the following points in rendering their decision.

I. Appellant's invention

Appellant conceived of a novel and non-obvious a fare rule summarizer tool embodied in a graphical user interface, method and software that concisely summarizes fare rules and restrictions on fares that may be interest to an end user. Aspects of the invention summarize fare rules and restrictions in a manner that is easily understandable by glancing at a display that depicts results from the fare rule summarizer in a graphical user interface. The tool provides a quick summary of whether evaluated fares of interest pass, fail or cannot be evaluated for various types of fare rule. The fare rule summarizer tool can be used as a planning tool to allow a user such as a travel agent to review how fares will pass particular fare rules and based on this review, suggest modifications for departure or arrival times to enable cheaper travel for the traveler or conduct what-if scenarios with respect to cost vs. convenience for the traveler.¹

¹ See Appellant's specification page 2.

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II. Non-statutory subject matter rejections

Claims 1-14

Claim 1 recites a user interface for a fare rule summary tool, the user interface displayed on a monitor. The Board contended that: "The claimed user interface is directed to nothing more than the layout of information at the point of interaction with a human being (Fact 1)."²

Preamble limitations breathe life into the claims

In sustaining the examiner's rejection under 35 U.S.C. 101, the Board chose to ignore claim limitations merely because those limitations appeared in the preamble. The Board made the following finding.

1. The term "interface" in the computer science art means "a. The point of interaction or communication between a computer and any other entity, such as a printer or human operator. b. The layout of an application's graphic or textual controls in conjunction with the way the application responds to user activity. " The American Heritage Dictionary of the English Language (4th ed. 2000), found at www.bartelby.com.³

Claim 1 however does not claim an interface in the abstract. When properly read, Claim 1 is directed to an interface embodied on a monitor, that is the claim is tied to another statutory class, to wit an article. Therefore, the claim only covers those interfaces that are displayed on a monitor. A monitor is a machine or article and its presence in the claim has been improperly dismissed by the Board.

Instead, the Board decided to construe the claim without the feature of the display, merely because "monitor" appeared in the preamble. "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51

² Decision page 6.

³ Id. page 4.

USPQ2d 1161, 1165-66 (Fed. Cir. 1999). See also *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1333. 68 USPQ2d 1154, 1158 (Fed. Cir. 2003). Here the preamble is necessary to give life and meaning to the claim, because by reciting that the monitor displays the novel interface, it transforms the monitor to a novel monitor. The monitor, displaying the claimed interface is different from a monitor displaying another interface or no interface at all.

It is also true that: "Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation. See, e.g., *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989) (The determination of whether preamble recitations are structural limitations can be resolved only on review of the entirety of the application "to gain an understanding of what the inventors actually invented and intended to encompass by the claim."); See also *Pac-Tec Inc. v. Amerace Corp.*, 903 F.2d 796, 801, 14 USPQ2d 1871, 1876 (Fed. Cir. 1990) (determining that preamble language that constitutes a structural limitation is actually part of the claimed invention).

Here the preamble limitation of a monitor is in fact a necessary structural limitation imposed on the claim. For without the monitor there would be no interface according to the Board's own supplied definitions [FF-1]. The first definition "a. The point of interaction or communication between a computer and any other entity, such as a printer or human operator.", would not be satisfied by reading out of the claim the word monitor, because there would be nothing in the claim that could be used to interact or communicate with a computer or any other entity. Indeed, without the monitor, there could be no communication with a person because there would not be any interface that could be rendered to communication with such a person. Similarly, under the second definition, "b. The layout of an application's graphic or textual controls in conjunction with the way the application responds to user activity.", there would again be no interface without the monitor because there would be no layout.

The monitor is not an intended use.

The Board further misconstrues the feature of a monitor as an intended use, citing to *Pitney* arguing: "If . . . the body of the claim fully and intrinsically sets forth the complete

invention, including all of its limitations, and the preamble offers no distinct definition of any of the claimed invention's limitations, but rather merely states, for example, the purpose or intended use of the invention, then the preamble is of no significance to claim construction because it cannot be said to constitute or explain a claim limitation." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999) (citations omitted). However, as the Board found⁴, the body of claim 1 does not fully and intrinsically set forth all of claim limitations. Therefore, the preamble which recites the structure that breathes life into the interface to wit, "a monitor" necessarily further limits the claimed "user interface" and therefore cannot be an intended use. Therefore, unlike *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997) ("where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention"), here the monitor is a necessary structural element need to define the complete structure of the invention, and clearly is not an intended use. Further, the monitor cannot be an "intended use" because the monitor is a device and thus is not a use.

New non-statutory subject matter rejections.

The Board entered new grounds of rejection against claims 15-39 under 35 U.S.C. 5 101 as being directed to patent ineligible subject matter. Claims 15-18 and 28-35 are method claims and claims 19-27 and 36-39 are computer program product claims. Each of these sets of claims are treated separately because they raise different issues.

Claims 15-18

Claim 15 is drawn to a method for producing a concise summary of fare rules and restrictions that the fare rules place on fares. Claim 15 includes as a step "... displaying the summary on a user output device." Claim 15 is therefore tied to an apparatus, a user output device. Therefore, claim 15 is directed to statutory subject matter. As the Federal Circuit observed in *Biliski*.

⁴ Board decision page 6.

The Supreme Court, however, has enunciated a definitive test to determine whether a process claim is tailored narrowly enough to encompass only a particular application of a fundamental principle rather than to pre-empt the principle itself. A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See *Benson*, 409 U.S. at 70 ("Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines."). ⁵

Moreover, this step in Claim 15 is not mere insignificant post-solution activity. Rather, this step is necessary, unlike a mere storage step, to actually provide the user interface, for without the user interface being somehow rendered or as recited in claim 15, displaying the user interface, the user interface does not exist because as the Board observed in its definition [FF-1] there would not be any point of interaction or communication between a computer and any other entity, nor would there be any layout of an application's graphic or textual controls in conjunction with the way the application responds to user activity, absent the monitor.

Claims 28-35

Claim 28 is a method analogous to claim 1. However, unlike claim 1, claim 28 positively recites in the body of the claim an apparatus, to wit, a monitor in the step of "rendering on the monitor"

Accordingly, under the reasoning adopted by the Board and required by *Bilski*⁶ this set of claims are clearly directed to statutory subject matter because the claims are tied to a particular machine, the monitor. A monitor is found in Appellant's specification as item 40 in Fig. 1.

Claims 19-27 and 36-39

The board held that the preambles of "claims 19-27 and 36-39 cover at least one embodiment which is directed to subject matter that is unpatentable under § 101."

⁵ *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008), (en banc), petition for cert. filed, 77 USLW 3442 (U.S. Jan. 28, 2009) (No. 08-964). *Certiorari granted*.

⁶ *Id.*

The preamble of Claim 19 recites "A computer program product residing on a computer readable medium for producing a fare rule summary comprises instructions for causing the computer to." The Board found, without making a formal finding of fact thereof, that: "In particular, 'computer readable medium' was conventionally used at the time of the invention as a term of art to refer to intangible computer readable media including "transmission" media and carrier waves embodied in electrical, electromagnetic, infrared, or optical signals, or any other media from which a computer can read."⁷

The Board based this finding on furnishing Appellant citations to two prior art patents that purport to cover non-statutory embodiments directed to a signal, i.e., "transmission medium (or media)" or a "carrier wave."⁸ The Board further stated that their review of the USPTO EAST database of U.S. Patents and Published Applications showed that there are more than 2,400 distinct patents and published applications, filed before Appellant's priority date, which defined "computer readable medium (or media)" as inclusive of either a "transmission medium (or media)" or a "carrier wave." and according to the Board as of the date of the decision that number was greater than 24,000.⁹

The Board, other than furnishing the citations to the two patents, did not furnish Appellant any further information such as the queries used by the Board. Notably missing from the Board was any contrarian information that could have revealed a difference of opinion in the patent field regarding such a definition. Specifically, Appellant was not furnished any information regarding how many patents/applications did not include "transmission medium (or media)" and/or a "carrier wave" as part of a computer readable medium. Has such information be found by the Board, it should have been provided to Appellant and would have properly dissuaded the Board from adopting this line of reasoning.

Appellant undertook searches from the US PTO's website.¹⁰ The first page of each search is attached hereto and shows that some 101,181 applications were published including

⁷ Board decision page 14.

⁸ *Id.*

⁹ *Id.* Note 5, page 15.

¹⁰ As of May 15, 2009

computer readable medium, but without the mention of "carrier wave"¹¹ and some 118,843 applications were published including computer readable medium but without mention of "transmission medium or media."¹² About 8000 (of the carrier wave group) and 7,000 (of the transmission medium/media group) were published prior to Appellant's publication date and presumably have earlier priority dates. Appellant did not conduct a search of Issued Patents.

Given that there are far more applications that apparently do not (or did not) define computer readable medium in the manner urged by the Board, the Board's own findings are not supported by substantial evidence, much less the preponderance of the evidence that the Board must show. Appellant's searches clearly show that the patent field did not consider "transmission medium (or media)" or "carrier wave" as a computer readable medium (or media) at least from a time prior to Appellant's filing to the present. The Board likewise did not consult any authoritative sources such as dictionaries or industry publications to support its contention that persons of ordinary skill working in computer fields would consider a computer readable media as including a carrier wave or a transmission media.

Again, the Board has committed reversible error. The Board, in acknowledging that Appellant did not define computer readable medium, however then failed to use this acknowledgment and find that Appellant has absolutely no support in the specification *per se* for "transmission medium (or media)" or a "carrier wave" as being a part of computer readable media, while having ample support for "computer readable media" as computer storage, the normal meaning given by the art to "computer readable media." Thus, the Board mistakenly failed to consider Appellant's specification in construing computer readable media.

The mere fact that a relatively small fraction (about 25%) of published applications contain allegedly support for "transmission medium (or media)" or a "carrier wave" as part of a computer readable medium should not permit the Board to hold Appellant's claims directed to non-statutory subject matter when the clear weight of the evidence is against such a finding.

¹¹ Attachment 1

¹² Attachment 2

Appellant neither actively nor passively sought to encompass "transmission medium (or media)" or "carrier wave" within the meaning of computer readable medium and the vast weight of evidence on this question, as posed by the Board, clearly is inapposite to the Board's informal finding.

While the Board clearly expresses that Appellant has support for computer readable storage media or the like, and presumably can amend its claims, this is neither satisfying nor proper. The reasoning adopted by the Board if sustained would improperly called into question any issued patent where the term computer readable media was not defined in a manner suitable to the Board. Therefore, this improper reasoning affects not only on the case at hand, but other cases, especially issued patents, in which the patentees never contemplated, as in this case, that computer readable medium could encompass "transmission medium (or media)" or "carrier wave."

Such reasoning if sustained could result in an unconstitutional taking should claims in those cases be held invalid in subsequent proceedings.

Nor should Appellant or other patentees be required to supply definitions for every term or phrase used in a patent application, simply because such a term could be improperly construed, as was done by the Board in this instance.

"Transmission medium (or media)" and "carrier waves" are not "computer readable."

Finally, the Board has not shown that "transmission medium (or media)" or a "carrier wave" are in fact "computer readable." Appellant has not described any structure that permits a computer to read a carrier wave or a transmission medium. Hence, a computer readable medium as used in the claims could not encompass either read a carrier wave or a transmission medium. While those terms are stated in boilerplate form in the exemplary patents, those patents also have not enabled a computer to read a transmission media or a carrier wave.

III. Claims 1-3, 12-14, and 28-30 are not anticipated Tanner.

Appellant maintains that Tanner does not show "a fare evaluation result table that displays fare rule summaries for fares in slices of an itinerary, the fare evaluation result table having a first one of rows and columns representing fares and a second one of rows and columns representing the fare rule summaries," for the reasons discussed in the Briefs.

However, in sustaining the examiner's rejection of claims 1-3, 12-14, and 28-30, rather than addressing the features of Tanner and Appellant's claim, the Board misconstrues the word "fares" in a manner to be consistent with how Tanner used that word, but inconsistent with how Appellant uses that word in the specification and the claims.

The Board adopted "[A] common and ordinary meaning of fare"¹³ [FF-2] in contravention to well-established precedents that look to the meaning that a person of skill in the pertinent art would give to the word.¹⁴ While, this meaning fits squarely with Tanner's depiction of a dollar amount and the examiner's and Board's contention that the dollar amount were in fact a fare, the Board overlooked that the claims do not recite a fare, but recite "fares."

However, the Board avoided consulting Appellant's specification to clarify the intent of the term "fares" as used by Appellant merely noting that: "Appellant's Specification does not provide a definition of 'fare.'" [FF-3]. Appellant had relied on what the skilled person in the air travel industry would view as the meaning of "fares," as exemplified by ATPCO.¹⁵

The Board further compounded this error by ignoring the plain meaning given to "fares" by ATPCO, an industry source for "fares" for airlines [FF-5]¹⁶, while noting that in isolated instances ATPCO references AL and AM used the word "fares" to refer to fare price [FF's-6, 7]¹⁷.

Appellant contends that the meaning given to the word "fares" by the Board while convenient for the Board to reject Appellant's claims is nonetheless clearly erroneous and is contradicted by [FF-4] "The Appellant's Specification also refers to "fare price," shown in the second column of the table of Figure 3. Spec. 7: 18; Fig. 3." By construing "fares" to merely mean price,

¹³ Decision, page 17.

¹⁴ *Phillips, v. AWH Corporation*, 415 F.3d 1303, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005)

¹⁵ Specification, page 1.

¹⁶ Decision page 17

¹⁷ *Id.* page 18

instead of the more complicated structure, as disclosed in ATPCO, the Board clearly ignored the distinction that Appellant drew in the specification between "fares" and "a fare price."

The conclusions drawn by the Board from these findings were therefore clearly erroneous.

Moreover, the Board's findings are inconsistent with the claims, the specification and the problem that Appellant sought to solve. Had the Board chose to read Appellant's claims in light of the specification, the Board would have concluded that unlike Tanner, Appellant's use of the word "fares" required more than just a dollar amount, which is all that is depicted in Tanner.

In *Phillips* The Federal Circuit set forth principles that the Board should have used in deciding the meaning of terms in the claims, requiring the Board to consult the specification for claim construction guidance, not merely definitions.

Appellant starts with the Board's finding of the absence of a clear definition for "fares" in Appellant's specification. However, *Phillips* does not require Appellant to provide a specific definition in order for the specification to be considered in construing a claim feature. Indeed Appellant has provided a definition.¹⁸ Rather, *Phillips* takes an expansive approach to the role of the specification in claim interpretation. In addressing the *Texas Digital*¹⁹ line of cases, the Federal Circuit reasoned that: "Properly viewed, the "ordinary meaning" of a claim term is its meaning to the ordinary artisan after reading the entire patent." 415 F.3d at 1321.

Appellant relied on an industry standard, ATPCO. An ATPCO publication, requested by the Board described fares as contained in a master fares file and illustrated a fare record as:

¹⁸ It is Appellant's position that Appellant has provided such a definition, which relies on ATPCO. Also, the Board noted that in the depiction of fares in Fig. 3 there is depicted under fares cryptic text such as "TW.BOS->PHL.OW.Y" and under price there is depicted a dollar value. Clearly, Appellant has defined fares as something different than merely a price and what is all that is depicted (not defined) by Tanner.

¹⁹ *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193 (Fed.Cir.2002).

Applicant : David M. Baggett
 Serial No. : 09/877,159
 Filed : June 8, 2001
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The ATPCO master fares files contain one record for each fare amount which has been instructed by a carrier and which is in effect as of the date of the file, or which is proposed to become effective on a future date.²⁰

*EXAMPLES (file as of 6-1-97)

TARIFF	CXR	MARKET	FARE CLASS	FARE	EFF. DATE	LINK	SEQ. NO.
000	AA	CHI NYC	Y	\$250.00	961231	14	001
000	AA	CHI NYC	Y	\$300.00	970605	14	002

A more exact representation of fares in a record layout format is depicted by ATPCO, below.²¹ This record layout has a field, "fare value" that corresponds to Tanner's price, but in no sense is viewed in ATPCO as the "fares."

ATPCO RECORD LAYOUT																														
RECORD NAME															SYSTEM										DATE					
DOMESTIC PASSENGER LOCAL FARES DATA SUBSCRIPTION RECORD																														
LOCATION					DATA FORMAT																									
Y	C	CITY		FARE CLASS CODE	LINES		R	N	G	W	S	FARE VALUE	C	E	R	C	A	CHG DATA		P	L	S	E	CHG TYPE						
A	R	R	S		E	F	S	U	T	M	C		C	E	E	R	I	B	I	G	R	I	N	C	O	1	2	3	4	
N	C	D	G																											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
CHG TYPE	OLD DATE	NEW DATE	P	ZONES			O	N																						
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Appellant's specification to properly construe "fares," guided by the principles set forth in *Phillips*. In *Phillips*, the Federal Circuit noted that:

We have made clear, moreover, that the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application. See *Innova*, 381 F.3d at 1116 ("A court construing a patent claim seeks to accord a claim the meaning it would have to a person of ordinary skill in the art at the time of the invention."); *Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed.Cir.2004) ("customary meaning" refers to the "customary meaning in [the] art field"); *Ferguson Beauregard/Logic Controls v. Mega Sys., LLC*, 350 F.3d 1327, 1338 (Fed.Cir.2003) (claim terms "are examined through the viewing glass of a person skilled in the art"); see also *PC Connector Solutions LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1363 (Fed.Cir.2005) (meaning of claim "must be interpreted as of [the] effective filing date" of the patent application); *Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1353 (Fed.Cir.2000) (same).

[4] Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. This court explained that point well in *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed.Cir.1998):

It is the person of ordinary skill in the field of the invention through whose eyes the claims are construed. Such person is deemed to read the words used in the patent documents with an understanding of their meaning in the field, and to have knowledge of any special meaning and usage in the field. The inventor's words that are used to describe the invention-the inventor's lexicography-must be understood and interpreted by the court as they would be understood and interpreted by a person in that field of technology. Thus the court starts the decision making process by reviewing the same resources as would that person, viz., the patent specification and the prosecution history.

The illustrated fare records from ATPCO contain a column "market" that has listed city pairs and a column "fare" that lists a dollar value. Claim 1, recites ... a fare evaluation result table that displays fare rule summaries for fares in slices of an itinerary, the fare evaluation result table having a first one of rows and columns representing fares and a second one of rows and columns representing the fare rule summaries. Thus, as used by Appellant in claim 1 fares are more than a price. Indeed, Appellant's specification devotes much discussion of evaluation of fares against these fare rules to produce those summaries. Appellant's specification treats "fare price" as part of "fares."²² It is incontestable that Appellant has clearly delineated a distinction between "fares" and a "fare price" with a fare price being part of, by not the entirety of, various "fares" in both the specification and the claims.²³ The Board has not justified its refusal to apply this distinction.

Indeed, when the word "fares" is read in the context of claims 1-3, 12-14, and 28-30 it requires more than just a dollar amount, i.e., a price, as taught by Tanner. If "fares" could be properly construed as merely a dollar amount, what meaning could be given to the other limitations in claim 1 (or claims 2 and 3) that the table display "fare rule summaries for fares." What possible summary of fare rules could be displayed or determined based on viewing fares as merely a dollar amount. The fare rule summaries for fares in slices of an itinerary therefore would have no meaning in claim 1, but they are the *sine quo non* of claim 1. However, when fares are construed properly as containing *inter alia* a market and a price as well as codes that invoke fare rules, as explained in the specification, now the claim would have meaning, make sense and indeed distinguish over Tanner.

Thus, one of skill in the art when construing Appellant's claims, had he consulted the specification as instructed in *Phillips*, would have properly construe "fare prices," which is all that is illustrated by Tanner, as but a dollar amount, and a part of that data included in "fares."

²² For instance, Appellant describes: "The fare/rule summarizer 17 can sort 69 the fares at three different levels: 1) by status of the fare (meaning whether the fare passes, fails or defers evaluation against rules and restrictions), 2) by airline, or 3) by the fare price. Specification page 6."

²³ See claim 3 for instance.

No proper construction of "fares" as used by Appellant would view fares as synonymous with price as the Board has incorrectly done.

Indeed, where the Board definition of fares as merely a price to be adopted, there would be no need for any of the processing described in the specification or any need for a table that represented the fare rule summaries, as in Claim 1. There would be no logical object for any of the processing, fare rules, routings, etc. to operate on if "fares" were merely a dollar amount.

Thus, the Board's findings pertaining to "fares" are not supported by substantial or indeed a preponderance of the evidence, and rather are clearly erroneous. Therefore, the Board should reverse itself on finding claims 1-3, 12-14, and 28-30, as anticipated.

The Board made the following additional findings that are not supported by substantial evidence. "9. The table includes rows representing fares." This finding is clearly erroneous because the Board has confused fares with fare prices or prices, which is all that is depicted by Tanner. "10. The table further includes columns representing fare rule summaries." This finding is clearly erroneous because the Board confused the meaning of fares and the columns do not depict summaries. "11. The table of Figure 4A further includes a column labeled "Adult" which lists the base price (without tax) for an adult for each fare listed in the associated row. Tanner, Fig. 4A." This finding is clearly erroneous because the Board has confused fares with fare prices or prices, which is all that Tanner depicts. "12. Tanner inherently discloses that the fare rules summaries for certain trips (e.g., one-way trips) would necessarily be displayed in slices of an itinerary" Tanner would need to evaluate fares against fare rules in determining fares that can be used with flights. However, there is no need for Tanner to produce or indeed depict fare rule summaries. Therefore, fare rule summaries are not inherent in Tanner because they are not necessarily present.

Given the Board's erroneous construction of the term "fares" and clearly arbitrary decision to decline to define fares "... as to require the unique code provided as an example in Figure 3 of Appellant's Specification or to define "fares" so narrowly as to require the specific information contained in the published ATPCO fares under the more specific usage of this term in the industry.", and instead opt for a layman's view of that term is clearly improper and reversible error.

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The Board also fails to address how "... the Examiner's broader reading of "fare" to refer to fare price is reasonable ..." in view of how Appellant delineated fares from fare price in the figures, claims and specification.

IV. Conclusion

Reconsideration and reversal of the Board's decision is requested. Alternatively, clarification of the basis of the Board's reasoning is requested in order for Appellant to consider preparation of an appeal to the Federal Circuit.

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Respectfully submitted,

Date: June 3, 2009

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